IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 168 OF 2005

IN

FAMILY COURT APPEAL NO. 122 OF 2005

Anita Jankojirao Jadhav .. Applicant

V/s

Sambhajirao R. Jadhav & Anr. .. Respondents

Ms. Seema Sarnaik for the Applicant.

Mr.S.J. Ghogare with Ms.Patil for the Respondents.

CORAM : H.L. GOKHALE &
MRS. R.S. DALVI, JJ.

DATE : 26TH SEPTEMBER 2005

P.C. :

1. Heard Ms.Sarnaik for the Applicant and Mr.Ghogare for the Respondents.

2. This Civil Application seeks custody of the minor child to the Applicant mother. That is the principal prayer and stay is sought of the decree dated 22nd February 2005 and also the access to the child on week ends and during the vacations.

3. The Applicant was married to the son of the Respondents in February 1996 and this child Ranoji was

born on 17th November 1996. Unfortunately, after a very few months, on 25th May 1997 the husband of the Applicant died in a car accident. It is the case of the Applicant that she continued to stay with her minor son and the Respondents, but since long they did not allow her to continue to reside in her matrimonial home with them and she had to go back to her parents' house in Gwalior without her son. As far as the Respondents are concerned, it is their contention that it is not so. They were always ready and willing to look after the grand-child as well as the daughter-in-law. However, because of the strained relations between the parties that could not work. The fact remains that now the child Ranoji is living with the Respondents and attending the Abhinav Vidyalaya English School situated at Erandavne, Pune. He is studying in III standard. He lives without his mother whose care and affection he primarily needs at this tender impressive age.

4. When the civil application was moved before us, we heard the parties and talked to them and their relatives in chamber. We realised that the Applicant did not have any opportunity since long to meet and to be with her son. We had a word with the child also. Thereafter by our order passed on 19th September 2005, the Applicant was allowed to take the child with her in

the evenings of four days beginning from 20th September to 23rd September 2005. Thereafter she was allowed to take the child to stay with her at her relative's residence in Pune on Saturday 24th September 2005 and she was to bring back the child to her in-laws house on Monday morning, i.e. 26th September 2005. That order has been complied with. The child had gone and stayed with the mother. The mother and her parents as well as her in-laws confirmed this and it appears that the child has stayed with her quite happily. It is however pointed out by the Respondents' advocate that in the meanwhile obviously he missed his home work during these 4-5 days.

5. Thereafter we have heard the matter today in chamber. The point for consideration is as to whether at this stage we should disturb the custody of the child and hand over to the Applicant mother. Ms.Sarnaik, learned counsel for the Applicant, submitted that the Applicant is an able lady, she is a graduate and very recently she has done a course in Computer applications. She stated that the Applicant is even today ready and willing to come down to Pune and stay with her in-laws. Mr.Ghogare, on the other hand, pointed out that because of various developments that have taken place in the meanwhile, his clients are not agreeable and that will

not be possible now. He however offered that the Respondents will pay some monthly amount to the tune of Rs.2,000/- towards rent in the event the Applicant takes another house for her stay in Pune. Inasmuch as getting a house on rent is difficult, we looked into the award of the Motor Accident Tribunal which granted compensation to the Applicant, to her son and to her in-laws. We are told that an amount of Rs.2,18,408/- has been kept in fixed deposit in the name of the Applicant and that receipt is with the Respondents. Mr.Ghogare assures that the receipt will be returned to the Applicant. Under the award, an amount of Rs.1,45,605/- (including the interest which had accrued by that date) was to be received by the Applicant. Mr.Ghogare fairly stated that the cost of litigation was spent from this amount almost to the tune of Rs.90,000/- and there were some further expenses. He however stated that the remaining amount of Rs.60,000/- would be paid over to the Applicant. The deposit of Rs.2,18,408/- (along with the interest accrued thereon) would be now in the range of Rs.2,90,000/-. Thus, the amount in the range of Rs.3,50,000/- would be available. The father of the Applicant was however candid to state that it would be difficult for her to stay alone in Pune and there will be substantial monthly expenses and it would be difficult for her to live on her own. The F.D. is a

cumulative one and has at least two more years to mature. He is a retired person and for him it will not be possible to bear all these expenses or to come down and stay with his wife in Pune.

6. In the circumstances, we are left with no alternative but to continue the custody of the child with the Respondent as of now though the Applicant is the legal as well as natural guardian. The child needs the care and love of mother at this tender age although his paternal grand parents are looking after him presently. We are not changing the custody principally because we do not want to disturb his education in the middle of the academic year and since the applicant is not in a position to arrange a residence for herself in Pune. The Applicant mother will however have the right to meet the child as and when she wishes to meet the child. Ms.Sarnaik requests that the Applicant be permitted to meet the child and take him with her on the first and second Saturdays and Sundays of each month. That will be so in case she comes down to Pune and takes the child for access with her. As far as the period from Monday to Friday in between these two weekends is concerned, it will be open for her to come and meet the child in the evening or to take him with her on Monday, Wednesday and Friday and to return on the next day

morning. Mr.Ghogare, on instructions, states that the Respondents will not have any objection.

7. As far as the vacations are concerned, Diwali Vacation is likely to be for two weeks from 30th October 2005 till about 15th November 2005. The Respondents will confirm as to what is the exact period of vacation. We permit the Applicant to take the child with her and she may take the child to Gwalior for a period of 10 days which will be first 10 days of the Diwali Vacation. As far as the Christmas Vacation in December is concerned, the Respondents are not in a position to confirm as to what is the likely period. In the circumstances, the Respondents may inform the Applicant about the period of Christmas Vacation and accordingly the Applicant may come down to Pune and take the access of the child for half the period of Christmas Vacation when he will stay with her in Pune. As far as the May Vacation is concerned, the Applicant will be entitled to take the child with her for half the period of vacation which will also be first half of the May Vacation unless the custody is handed over to her before that vacation.

8. This arrangement will continue until May Vacation of 2006. It will be open to the Applicant to apply for admission of her son Ranoji in a good English

Medium School in Gwalior in the academic year beginning with June 2006. For that purpose, she must obtain the appropriate information of the concerned school and apply to this Court well in time in the month of February-March 2006 so that after considering her application, the Court will be able to decide on the change in custody which would normally be so. Undoubtedly, any such civil application moved by her will be decided after a copy thereof is served on the Respondents and after the counsel for both the parties are heard. In the event of change of custody, the F.D.R. for the child (arising out of the order of the Motor Accident Tribunal, Kolhapur) will be handed over by the Respondents to the Applicant. We expect the corpus thereunder to be retained as it is until the child becomes major.

9. Ms.Sarnaik for the Appellant states that the Applicant has applied for custody of the child in Gwalior. She has also applied for maintenance under section 19 of the Hindu Adoption and Maintenance Act, 1956. In view of the fact that the Respondents have offered to pay only rent if the Applicant stays in Pune and not any maintenance amount, Ms.Sarnaik states that the Applicant will continue her maintenance application in Gwalior Court. As far as the custody application is

concerned, she fairly states that in view of this order, she will not proceed with the same and apply for the withdrawal of the one in Gwalior.

10. Ms.Sarnaik states that to enable the Applicant to apply to any school in Gwalior, the Applicant will require the report card from the school in Pune. The Respondents will fully cooperate with the Applicant if any such application is made by the Applicant.

11. The Respondents assure that the fixed deposit receipts and the amount of Rs.60,000/- by an account payee cheque will be sent to the Applicant to her Gwalior address within two weeks from today.

12. In view of the order which is passed above, both the impugned orders will stand stayed and substituted by this order. We expect both the parties to strictly abide by this order so that the other party is not required to move the court for breaches, if any, and in that event to cancel the concessions under this order.

13. Civil Application stands disposed of with this order.

14. Parties to act on an authenticated copy of this

order.

(H.L. GOKHALE, J.)

(MRS. R.S. DALVI, J.)